

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON FEDERAL RELATIONS, ENERGY, AND TELECOMMUNICATIONS

Call to Order: By **CHAIRMAN ROD BITNEY**, on February 17, 2003 at 3:27 P.M., in Room 455 Capitol.

ROLL CALL

Members Present:

Rep. Rod Bitney, Chairman (R)
Rep. Gary Matthews, Vice Chairman (D)
Rep. Alan Olson, Vice Chairman (R)
Rep. Dee Brown (R)
Rep. Eileen J. Carney (D)
Rep. Tim Dowell (D)
Rep. Daniel Fuchs (R)
Rep. Hal Jacobson (D)
Rep. Jeff Laszloffy (R)
Rep. Scott Mendenhall (R)
Rep. Diane Rice (R)
Rep. Brennan Ryan (D)
Rep. Jim Shockley (R)

Members Excused: Rep. John Parker (D)

Note: Representatives Fuchs and Mendenhall left prior to Executive Action.

Members Absent: None.

Staff Present: Glenna McClure, Committee Secretary
Mary Vandembosch, Legislative Branch

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: HJ 16, 2/4/2003; HB 483, 2/3/2003;
HB 562, 2/10/2003; HB 580,
2/11/2003
Executive Action: HB 580; HB 562; HJ 16

HEARING ON HJ 16

Sponsor: REPRESENTATIVE SCOTT MENDENHALL, HD 39

Opening Statement by Sponsor:

{Tape: 1; Side: A; Approx. Time Counter: 2 - 5.5}

REP. MENDENHALL said HJ 16 urges President George W. Bush and the United States Congress to extend the existing federal wind power tax credit. He read the Joint Resolution verbatim. Bill entered as exhibit one.

EXHIBIT (feh35a01)

Proponents' Testimony:

{Tape: 1; Side: A; Approx. Time Counter: 5.5 - 20}

Tom Figarelle, Forward Montana, said that within the state, we have abundant natural resources. According to the American Wind Energy Association, a reasonable estimate of income to a landowner from a single utility scale turbine is about \$2,000 a year. This would displace the lower cost of crops and could be a benefit to farmers in Montana. He urged the support of the committee.

John Fitzpatrick, Northwestern Energy (NWE), said that they think it is important for the development of wind power in Montana to have some certainty with respect to the tax credit. This resolution is an important statement from the state of Montana and urged a do pass recommendation.

Betty Whiting, Montana Association of Churches, said that they encourage clean energy for the state. They are in support of this resolution.

Dave Gibson, Governor's Office, said that they support this resolution.

Tom Lythgoe, County Commissioner, Jefferson County, said he stands in support of this resolution.

Matthew Leow, Montana Public Interest Research Group (MontPIRG), said that they stand in support of this resolution. It is not only good for the environment but also for the economy. Wind power creates more jobs than coal. The coal industry receives

government subsidies, therefore, it is good to provide the wind industry with tax incentives also.

Tom Daubert, Navitas Energy, said that he is in support of this resolution. It is important to call on Congress to act now because the tax credits are due to expire by the end of the year.

Debbie Smith, Natural Resources Damage Council/Renewable Northwest Project, said this is a good resolution. Tax credits are crucial in wind production. This is a safe tax credit as it does not kick in until the project is actually built and producing power.

Tom Harrington, Jefferson Local Development Corporation, encourages the committee to pass this resolution. There is great potential for wind energy development in Montana.

Gene Fenderson, Montana Progressive Labor Caucus, said they support passage of this resolution.

Patrick Judge, Montana Environmental Information Center, said that wind energy production does not adversely affect air or water quality. There are no waste disposal issues associated with wind power development. Construction time is short and there are economic benefits with this type of energy development. He distributed an editorial and newspaper article about wind energy. He said that Montana has the potential of providing 15% of the energy needs by wind power.

EXHIBIT (feh35a02)

Ann Wilsnack, Sierra Club and Aero Alternative Energy Resources, said that they urge the committee to pass this legislation.

Bob Rowe, Public Service Committee, said that he supports this resolution.

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

{Tape: 1; Side: A; Approx. Time Counter: 20 - 22}

REP. LASZLOFFY asked what Montana's skyline would like if 15% of energy needs were produced by wind turbines.

Patrick Judge said that 15% is the magnitude of potential that exists. In other parts of the world, wind parks are actually tourist attractions.

Closing by Sponsor:

{Tape: 1; Side: A; Approx. Time Counter: 22 - 25.4}

REP. MENDENHALL showed a model of the technology from Gamesa. Gamesa is the second largest wind turbine manufacturer in the world. The turbines of the past are much different than the new technology. Turbines today are much more efficient. The current tax credit amounts to \$17 to \$20 per megawatt. Wind is becoming very competitive. He showed a picture of some turbines in an alfalfa field. He said that he would appreciate a do pass on this resolution.

HEARING ON HB 483

Sponsor: REPRESENTATIVE EVE FRANKLIN, HD 42

Opening Statement by Sponsor:

{Tape: 1; Side: A; Approx. Time Counter: 25.4 - 30}

REP. FRANKLIN said that she has been approached by business owners in her community who are not able to compete with large utility companies in selling and servicing appliances. Although large utilities may not acknowledge it, they are able to subsidize the appliances and servicing portion of their business with the ratepayer portion of their business. HB 483 provides for separation of the appliances and servicing accounts from the ratepayer portion of the utility companies.

Proponents' Testimony:

{Tape: 1; Side: B; Approx. Time Counter: 0.1 - 25.8}

Pat Harmon, Midwest Heating and Cooling, Billings, said that his business does about 80% residential and 20% commercial work. He distributed an income statement from Montana Dakota Utilities (MDU). He said that 44.18% profit was realized by MDU under service and repairs. He said that MDU is able to do their repair work as a nonregulated business, therefore, their profits are very high. He distributed a copy of testimony of Albert Clark, Montana Consumer Council. He also distributed a copy of a letter

from Frank Durant, Regional Manager of MDU, to Senator Max Baucus.

EXHIBIT (feh35a03)

EXHIBIT (feh35a04)

EXHIBIT (feh35a05)

Mick Brown, Brown Plumbing and Heating, Billings, said that he has observed the same service workers using the same trucks that are owned by the utility companies for fixing gas meters as well as fixing furnaces and water heaters. He said that this affects many small businesses throughout the state and urges the committee's support.

Riley Johnson, National Federation of Independent Businesses, said that this has been an issue for many years. He said this is subsidized competition which is not fair. This bill clarifies the separation of utility services from repair and appliance services.

Candace Payne, Commercial Energy, said that this bill provides a good opportunity for businesses. It would provide for good competition and would be good for consumers. She urged a do pass.

Mike Tehle, Alpine Plumbing and Heating, distributed a booklet, The Cheryl Blandau Story, which included his written testimony and a story about a customer's experience with MDU. He also distributed a review of other states' legislative actions.

EXHIBIT (feh35a06)

EXHIBIT (feh35a07)

CHAIRMAN BITNEY indicated that the allotted time was up and asked that proponents state their name and who they represent.

Jim Ryan, Business Manager, Sheet Metal Workers Local Union #103, Helena, said he strongly supports passage of HB 483. He provided written testimony.

EXHIBIT (feh35a08)

Curt White, White Heating and Air Conditioning, provided some notes regarding his testimony.

EXHIBIT (feh35a09)

Pat Casey, ACT Heating and Cooling, Billings, said he was in support of HB 483 and provided written testimony.

EXHIBIT (feh35a10)

Cindy Donaldson, Chapter Executive, Montana Sheet Metal, Heating and Air Conditioning Contractors, said she represents 23 small business heating and air conditioning contractors who are in favor of HB 43.

Chris Hutchinson, Air Controls, Billings, said that he supports passage of HB 483.

Richard Burnside, Custom Commercial Services, said he agrees with this bill.

Bill Brennan, Brennan Heating, Great Falls, said they support this bill.

Robert Tehle, Alpine Plumbing and Heating, Billings, said that he supports HB 483.

Greta White, White Heating, provided written notes in support of HB 483.

EXHIBIT (feh35a11)

Kevin Costin, ACT Heating and Cooling, Billings, said he hoped the committee passes this bill.

Russ Rowsey, American Sheet Metal and Air Conditioning, Helena, said that he urges the support of HB 483.

Dennis G. Morgan, Modern Air, Inc., Havre, said that he was glad he was not in the Billings area and having to compete with MDU. He indicated that he does have a good working relationship with Northwestern Energy. The utility companies should not be allowed to send fliers about their unregulated business with the statements of their regulated business.

Carl Sweitzer, Sheet Metal, Air Conditioning Contractors of Montana, said that he helped put this bill together and would be available for questions.

Opponents' Testimony:

{Tape: 1; Side: B; Approx. Time Counter: 25.8 - Tape: 2; Side: A; 14.7}

John Alke, Attorney, Montana Dakota Utilities Company (MDU), provided a packet of information regarding MDU. He said that MDU has 24,000 electric customers in rural Eastern Montana including Sidney, Miles City, and Glendive. They have 71,000 gas customers because they also serve the city of Billings. They also provide appliance warranty service to approximately 8,000 Montana customers. For a monthly fee, MDU will warrantee gas home heating, ranges, dryers, water heaters. It is a very popular service in the rural areas and among the senior citizens. Service is available 24 hours a day and seven days a week. This bill requires that an entire separate company be established simply for the privilege of doing business in Montana. This bill prohibits utilizing common officers and employees between the parent company and the affiliate that this bill would require. If a company were formed it would be a subsidiary and an asset of MDU. It has been alleged that MDU ratepayer subsidizes the utility operations. There is a detailed accounting bulletin that shows the separation of regulated and unregulated services. In his packet, he also had a portion of Mr. Clark's testimony that was distributed by a proponent. He said that Mr. Clark said that MDU's accounting system is an extremely complex structure. He said that this bill intends to prohibit MDU from conducting business in Montana.

EXHIBIT (feh35a12)

Earl Terwilliger, General Manager, Energy West Montana, Great Falls, said that they see no reason for another layer of authority or additional laws. Separate accounts are maintained and periodically audited by the PSC.

EXHIBIT (feh35a13)

John Fitzpatrick, Northwestern Energy (NWE), provided written information on NWE thoughts on HB 483.

EXHIBIT (feh35a14)

Bob Pavlovich, IBEW #233 of Montana, said that this is the third time this bill has been here and urged the committee to put it to rest again.

Aidan Myhre, Montana Chamber of Commerce, said that they appreciated a climate of choice. She encouraged a do not pass on this bill.

Keith Allen, International Brotherhood of Electrical Workers, Local #233, said that this bill should be tabled.

Informational Testimony:

{Tape: 2; Side: A; Approx. Time Counter: 14.7 - 18.6}

Bob Rowe, Chairman, Public Service Commission (PSC), said the Commission has not taken a position on this bill. He introduced PSC attorney, Martin Jacobson.

Martin Jacobson, Attorney, PSC, said that the PSC remains neutral on this bill. The PSC does not encourage or discourage utilities from engaging in appliance merchandising and servicing. The Commission has determined that there is no existing law that prohibits the utility from doing so. The PSC has observed that some customers in the rural areas like the services provided by the utilities.

Questions from Committee Members and Responses:

{Tape: 2; Side: A; Approx. Time Counter: 18.6 - Tape: 2; Side: B; 10.2}

REP. CARNEY asked Mr. Sweitzer why he felt that it was unfair competition for the utility to provide 24-hour service.

Carl Sweitzer said that he feels that the utility is engaging in activities that are not regulated. There are businesses who also provide 24-hour service.

REP. CARNEY asked Mr. Sweitzer about his thoughts on MDU's stand on separating the companies.

Carl Sweitzer said that MDU already has a separate company that has separate employees. The employees and vehicles that are used for one company are not used for the other company. They may have the same officers. He said that MDU should be able to do the same for the heating and air conditioning services.

REP. CARNEY asked if other states have this kind of legislation.

Carl Sweitzer said that a previous handout provided this information.

REP. CARNEY asked if this bill would prohibit service by the utilities in rural areas where there may not be another company available.

Carl Sweitzer said that this bill is not intended to put them out of the business. It is intended to put them on a level playing

field with the other companies who offer the same types of services.

REP. BROWN asked Mr. Alke to address the issue of having a separate company.

John Alke said that the subsidiary companies under MDU use the same financial officers, human resource employees, and board members as MDU. There is a common structure through all of the subsidiaries.

REP. BROWN asked about the impossibility of separating out companies such as Knife River from MDU.

John Alke said that resources are shared between all of the subsidiaries and MDU. This bill would prohibit the sharing of these common resources.

REP. BROWN asked how MDU would feel about sending fliers, for a small charge, for other companies.

John Alke said that MDU has stopped sending mailers at the request of dealers in Billings. MDU has offered to finance their customers' purchases identical to their own customers. Fliers that are currently sent with utility bills are informational only and refer customers to the yellow pages for service providers.

REP. BROWN reiterated her question on sending flyers for other companies.

John Alke said that they probably would not.

REP. MATTHEWS asked that someone address the flyer issue.

Greta White said that she just got a flyer in her bill last month.

REP. MATTHEWS asked Mr. Alke about the customer base of MDU.

John Alke said that there are 8,000 service customers; 24,000 electric customers; 71,000 gas customers, but many are the same.

REP. MATTHEWS indicated that the 8,000 service customers was a small percentage of their customer base.

Mr. Alke said that their percentage of service customers varies by area. The greatest participation is in the two Indian

Reservations in Northeast Montana. The lowest participation area is Billings.

REP. MATTHEWS asked if he knew how many contracts were from senior citizens.

John Alke said that customers who choose service contracts tend to be in the more rural areas and tend to be older individuals.

REP. RICE asked Mr. Rowe if there were regulations with the PSC regarding the financing companies.

Bob Rowe said that there are no generalized rules. He talked about the particular instance where the Consumer Council was involved (the Albert Clark exhibit).

REP. FUCHS asked the PSC's position on policy making if this bill passed.

Bob Rowe said that if this bill passed they would probably undertake rulemaking and develop more specific policies.

REP. FUCHS asked if the PSC would recommend including municipal and cooperative utilities.

Bob Rowe the PSC has never had any direct regulation over the municipals or electric cooperatives.

REP. OLSON asked what prevents the PSC from doing rulemaking if this bill does not pass.

Bob Rowe said that, in theory, they could adopt rules regarding this issue. In Montana there is no specific statutory authority to adopt rules.

Closing by Sponsor:

{Tape: 2; Side: B; Approx. Time Counter: 10.2 - 15.1}

REP. FRANKLIN said that there could be some amendments to make it more palatable for MDU. It has been difficult for small businesses to compete with the big utilities. She said that this will come up again if this bill is not passed.

HEARING ON HB 562

Sponsor: REPRESENTATIVE NORMAN BALLANTYNE, HD 86

Opening Statement by Sponsor:

{Tape: 2; Side: B; Approx. Time Counter: 15.1 - 18}

REP. BALLANTYNE distributed a written summary of the bill.

EXHIBIT (feh35a15)

Proponents' Testimony:

{Tape: 2; Side: B; Approx. Time Counter: 18 - 19.5}

Bob Rowe, Chairman, Public Service Commission, said that the Commission strongly supports this legislation. Montana has one of the toughest statutes in the country and has been very effective. Slamming complaints have dropped significantly. Cramming complaints have gone up. He said that they support this bill.

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses: None

Closing by Sponsor:

{Tape: 2; Side: B; Approx. Time Counter: 19.5 - 20.5}

REP. BALLANTYNE said that this bill protects people from switching carriers without authorization and receiving unauthorized charges in phone bills. He urged a do pass from the committee.

HEARING ON HB 580

Note: CHAIRMAN BITNEY handed the gavel over to VICE-CHAIRMAN OLSON for the hearing on HB 580.

Sponsor: REPRESENTATIVE ROD BITNEY, HD 77

Opening Statement by Sponsor:

{Tape: 2; Side: B; Approx. Time Counter: 20.5 - 22.9}

CHAIRMAN BITNEY said that this bill was requested by the Montana Independent Rural Telephone Companies. Under current law, there is no specific authority given to the Public Service Commission to settle disputes among telecommunications carriers. If disputes arise the only recourse they have is to go to court. This is a expensive and time-consuming process. HB 580 would provide a quorum where disputes could be settled in a timely and less expensive manner. The bill provides carriers an alternative for dispute resolution and places all companies on a more equal footing.

Proponents' Testimony:

{Tape: 2; Side: B; Approx. Time Counter: 22.9 - Tape: 3; Side: A; 2.7}

Bob Rowe, Public Service Commission, said the Commission supports HB 580. It is the most efficient method of resolution between the telecommunications parties.

Geoff Feiss, General Manager, Montana Telecommunications Association, distributed written testimony.

EXHIBIT (feh35a16)

Bill Squires, Senior Vice President, Blackfoot Telephone Cooperative, Missoula, said there is a need for this bill. He said that it makes perfect sense to give authority to the PSC to deal with the technical disputes that occur. He urged a do pass.

Bonnie Lorang, Director, Governmental Affairs, Montana Independent Telecommunication Systems, said they support this bill.

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

{Tape: 3; Side: A; Approx. Time Counter: 2.7 - 8.2}

REP. JACOBSON asked how many disputes could be resolved by this conflict resolution.

Bob Rowe said he did not know, but they anticipate more as time goes by.

REP. JACOBSON asked if this would require additional staff.

Bob Rowe said that they submitted a fiscal note which took the number of cases times the number of hours needed.

Closing by Sponsor:

{Tape: 3; Side: A; Approx. Time Counter: 8.2 - 9.6}

CHAIRMAN BITNEY said this bill will do a lot of good and urges a do pass recommendation.

EXECUTIVE ACTION ON HB 580

{Tape: 3; Side: A; Approx. Time Counter: 9.6 - 9.8}

Motion/Vote: **REP. SHOCKLEY** moved that **HB 580 DO PASS**. Motion carried unanimously 14-0 by voice vote.

EXECUTIVE ACTION ON HB 562

{Tape: 3; Side: A; Approx. Time Counter: 9.8 - 11.3}

Motion/Vote: **REP. DOWELL** moved that **HB 562 DO PASS**. Motion carried unanimously 14-0 by voice vote.

EXECUTIVE ACTION ON HJ 16

{Tape: 3; Side: A; Approx. Time Counter: 11.3 - 12}

Motion/Vote: **REP. RICE** moved that **HJ 16 DO PASS**. Motion carried unanimously 14-0 by voice vote.

It was requested that these bills be put on the Consent Calendar.

Note: **REPRESENTATIVES FUCHS, PARKER, and MENDENHALL** voted by **PROXY** on all bills.

ADJOURNMENT

Adjournment: 5:40 P.M.

REP. ROD BITNEY, Chairman

GLENNA MCCLURE, Secretary

RB/GM

EXHIBIT (feh35aad)